



# **Shrinking Spaces for Democratic Dissent: A Study of the Grassroots Anti-Nuclear Movement in India 2017**

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# Shrinking Spaces for Democratic Dissent: A Study of the Grassroots Anti-Nuclear Movement in India

Sonali Huria

Abstract: The evolution of India’s ambitious nuclear program and the discourse surrounding it provides one of the textbook-cases for evaluating the strengths and weaknesses of Indian democracy in general. This paper explores why the Indian state has resorted to unprecedented repression against the grassroots anti-nuclear movements in the recent years. In doing so, it will attempt to underline the texture of the nationalist consensus around the nuclear program, which forms the backdrop of labeling any dissent on the issue, a punishable deviation. This paper will also touch upon the generic and specific problems associated with nuclear energy in India, which are behind its popular disapproval at the grassroots and resilience of the protests.

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## 1. Introduction

In India, the nuclear dream has been at the heart of post-independence nation building. It enjoys near-complete support across the political spectrum, and even popular endorsement, as ‘big science’ is supposed to catapult the country into economic prominence and prosperity. In this backdrop, when tens of thousands of farmers, fisherfolk, and common people rose in opposition to nuclear projects planned in their vicinity, the government did not only paint them ‘uneducated’ and ‘superstitious’, but also labeled them ‘anti-national’. To oppose a particular technology – in this case, ‘nuclear’, became the same as opposing the country’s growth, prosperity, and technological advancement. In an unprecedented move, charges of ‘sedition’ and ‘war against the state’ were leveled against thousands of common people from local communities in 2012 during the massive, but peaceful anti-nuclear protests in Koodankulam, located on the southern tip of India.

This bulldozing of democratic rights to push for nuclear power has happened at all possible levels – by criminalising local dissent, neglecting and even repressing independent experts and members of civil society, thwarting international solidarity by labeling it inimical to India’s national interests, and insulating the nuclear sector from scrutiny by attaching ‘national security’ sensitivity to it, even in the case of civilian reactors. Various costs and risks are then passed on to vulnerable sections with no say in the decision-making process.

It is against this backdrop that this paper attempts to understand the declining spaces for democratic dissent in India and the mounting violence and intimidation employed by central and state governments towards this end. The emerging people’s anti-nuclear energy movement, particularly their fierce



opposition to the setting up of nuclear power plants across the country, makes for a pertinent case study to understand the growing antagonism of the Indian state towards dissenting movements and the means adopted by it to curtail spaces for dissent – particularly as it exposes how much the Indian elite takes its people for granted; it is a quintessential example of the democratic deficit in the country.

The paper begins with a theoretical exploration of democracy and its relationship with dissent and examines whether one can speak of a ‘right’ to dissent. To this end, the paper explores the ‘right’ to dissent both in international as well as domestic law. The paper then proceeds to understand the pre-occupation of the Indian establishment since even before the country’s political independence in 1947, with the nuclear question, and argues that the objective to develop nuclear weapons and civilian energy have been central to its aspirations.

In the section that follows, the paper attempts to assess the grassroots anti-nuclear movements across various sites in India and how these resistance movements have been treated by the government, thus, exposing the fault lines in India’s democracy. The concluding section summaries the key arguments and findings of the paper.

## 2. Democracy and the ‘Right to Dissent’ – A Theoretical Exploration

Dissent is among the most important constitutive elements of democracy and is regarded essential to democratic legitimacy. Acknowledging the value of dissent, makes political processes more inclusive. Dissent can rectify power imbalances, thereby ensuring that deliberative processes are informed by a greater number of those who would be affected by policies or practices of their governments.



Despite its ambiguous position and not being explicitly recognised in domestic or international law, 'dissent' is regarded as crucial to any democracy, which is a living form of government that embraces the right of its citizens to 'hold or express opinions at variance with those commonly or officially held'<sup>1</sup> and by extension therefore, protest decisions that they disagree with.

The 'right' to dissent and express views that may differ from or stand in opposition to those of the Government, while "not found in any single formulated right in international law...is firmly anchored in a number of distinct but interconnected and mutually enforcing fundamental rights"<sup>2</sup> such as, the right to freedom of speech and expression, regarded the sine qua non of democracy, as well as the rights to freedom of peaceful assembly and association, and participation in public affairs, which is predicated in large measure, on the right to access, receive and share information. The right to dissent therefore, lies at the intersection of these inter-connected rights.

## 2.1 The 'Right to Dissent' and India's Domestic Legal Framework

The Preamble to the Constitution of India asserts that the 'people of India' give to themselves the 'liberty of thought and expression' – a declaration that finds concrete expression in Article 19(1) of the Constitution, which guarantees to all citizens, the rights to freedom of speech and expression<sup>3</sup>, and peaceful assembly

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<sup>1</sup> 'Dissent', Oxford Dictionary. Available at <https://en.oxforddictionaries.com/definition/dissent>

<sup>2</sup> Leslie, Lois. 2017. The Right to Dissent: A guide to international law obligations. Lawyers' Rights Watch Canada (LRWC). p.ii. ISBN: 978-0-9939149-0-4. Available at <http://www.lrwc.org/ws/wp-content/uploads/2016/11/Right-To-Dissent-PDF.pdf>

<sup>3</sup> This right however, is not absolute, and is subject to 'reasonable restrictions' as specified under Article 19(2) of the Constitution. These restrictions have been defined as those that can be in the interest of the "sovereignty and integrity of India, the security of the State, friendly relations with foreign States,



and association. In addition, following the persistent civil society-led 'National Campaign for Peoples' Right to Information'<sup>4</sup>, the Indian Parliament passed the 'Right to Information Act, 2005',<sup>5</sup> the basic object of which is to allow access to information to citizens regarding government policy and decision-making, thus, encouraging government 'transparency and accountability'.

Further, the Supreme Court of India has held on several occasions that the right to 'dissent' and 'peaceful protest' is vital to democracy. In *Anita Thakur vs. State of J&K and Ors.* (Writ Petition (Crl.) No.118/2007) for instance, a two-judge Bench of the Apex Court held as follows, "It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent (emphasis added). One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution."<sup>6</sup>

In another recent landmark judgment, in *Shreya Singhal Vs. Union of India* (W P (Criminal) No.167 of 2012)<sup>7</sup>, the Supreme Court held that it could not "be over emphasized that when it comes to democracy, liberty of thought and expression is

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public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

<sup>4</sup> Website of the 'National Campaign for Peoples' Right to Information'. Available at <http://righttoinformation.info/>

<sup>5</sup> Right to Information Act, 2005. Available at <http://righttoinformation.gov.in/rti-act.pdf>

<sup>6</sup> Ms. Anita Thakur Vs. State of J&K and Ors. (Writ Petition (Crl.) No.118/2007)

<sup>7</sup> *Shreya Singhal vs U.O.I* on 24 March, 2015. Available at <https://indiankanoon.org/doc/110813550/> (accessed on 26 May 2017)



a cardinal value that is of paramount significance under our constitutional scheme," and accordingly, struck down Section 66A of the Information Technology Act, 2000, denouncing it as one which "arbitrarily, excessively and disproportionately invades the right of free speech and upsets the balance between such right and the reasonable restrictions that may be imposed on such right."

In the same judgment, the Supreme Court further observed that "restrictions on the freedom of speech must be couched in the narrowest possible terms" and that the "proviso of Article 19(2) is justiciable in the sense that the restrictions on it have to be 'reasonable' and cannot be arbitrary, excessive or disproportionate<sup>8</sup>."

Most recently, in its historic judgment on the right to privacy, the Supreme Court of India upheld dissent as a cornerstone of democracy. Justice Chandrachud stated "criticism and critique lie at the core of democratic governance. Tolerance of dissent is equally a cherished value."<sup>9</sup>

## 2.2 The 'Right to Dissent' in International Law

International human rights law provides guarantees for the protection of all rights which are pivotal to the 'right to dissent', such as, rights to freedom of expression and opinion, association, peaceful assembly, public participation, and the right to information. Most of the ten (10) Core International Human Rights

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<sup>8</sup> Hamid Ansari. 24 September 2015. "Why India Must Take Seriously the Right to Dissent: Excerpts from the First Ram Manohar Lohia Memorial lecture delivered by Hamid Ansari, Vice President, Republic of India on 23 September 2015 at Gwalior". The Wire. Available at <https://thewire.in/11476/why-india-must-take-seriously-the-right-to-dissent/>

<sup>9</sup> Writ Petition (Civil) No 494 of 2012. Available at [www.supremecourtindia.nic.in](http://www.supremecourtindia.nic.in)



Treaties contain “provisions directly relevant to the protection of public freedoms.”<sup>10</sup>

Articles 19, 20 and 21 of the Universal Declaration of Human Rights (UDHR), 1948 for instance, contain the rights to freedom of speech and expression, right to hold beliefs without interference, right to freedom of peaceful assembly and association, and the right to public participation. Similarly, the International Covenant on Civil and Political Rights (ICCPR), particularly Articles 19, 21, and 25, provide guarantees to the right to hold opinions without interference, the freedom of speech and expression, peaceful assembly and participate in the conduct of public affairs, respectively.

Despite a robust legal framework and international human rights standards which are binding on India, there is growing concern regarding the restraints, legal arm-twisting<sup>11</sup>, and, in many cases, brute force employed by the Indian State to curtail the unfettered exercise of these rights, upon which the ‘right to dissent’ is predicated.

These concerns have become conspicuous not only amongst human rights defenders and civil society organizations within the country, but have and continue to increasingly find expression even internationally. For instance, following her

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<sup>10</sup> Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society. OHCHR. p.10. Available at [http://www.ohchr.org/Documents/AboutUs/CivilSociety/CS\\_space\\_UNHRSystem\\_Guide.pdf](http://www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSystem_Guide.pdf)

<sup>11</sup> The targeting of Greenpeace, India and Ford Foundation, followed by the de-licensing of 4470 NGOs in 2015 by invoking the provisions of the much-derided Foreign Contribution Regulation Act (FCRA) is a case in point. See Kumar, G Pramod. 13 June 2015. “13,000 in 2 months: NGO crackdown unleashed by the Modi govt will create a human rights crisis”. FirstPost. Available at <http://www.firstpost.com/politics/13000-in-2-months-ngo-crackdown-unleashed-by-the-modi-govt-will-create-a-human-rights-crisis-2294140.html>



country visit to India in 2011, the UN Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, based on 'numerous testimonies' about human rights defenders and their families, stated that many of them have been "killed, tortured, ill-treated, disappeared, threatened, arbitrarily arrested and detained, falsely charged, placed under surveillance, forcibly displaced or had their offices raided and files stolen because of their legitimate work in upholding human rights and fundamental freedoms."<sup>12</sup>

Her Report further observed that the work of human rights defenders and in essence, dissent in the country has been stymied through a host of means, including by labeling human rights defenders, "as 'Naxalites (Maoists)', 'terrorists', 'militants', 'insurgents', 'anti-nationalists' and 'members of underground' and their rights to freedom of expression, peaceful assembly, association and movement is on many occasions unlawfully restricted."<sup>13</sup>

More recently, in May 2017, during India's Third Universal Periodic Review at the UN Human Rights Council (UNHRC), serious concerns were raised by participating countries about the 'growing restrictions' and clampdown on civil society organizations in India<sup>14</sup>.

### 3. Indian Democracy and the Nuclear Question

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<sup>12</sup> Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya. Addendum, Mission to India (10–21 January 2011). 06 February 2012. UNGA A/HRC/19/55/Add.1. Available at <http://www.ohchr.org/Documents/Issues/Defenders/A-HRC-19-55-Add1.pdf>

<sup>13</sup> Ibid.

<sup>14</sup> Mitra, Devirupa. 05 May 2017. "India Comes in the Line of Fire at UNHRC Over Rights Record, Racism". The Wire. Available at <https://thewire.in/132165/india-unhrc-universal-periodic-review/>(accessed on 30.07.17)



In the course of its nationalist movement, India had largely figured out the sketch of what the country would look like after independence. Almost every prominent figure and faction in the freedom movement brought out its own newspapers and magazines, and intense discussions ensued not only on the methods to fight the colonial powers, but also about the basic principles and collective ambitions on which to found the new nation-state.<sup>15</sup> It was clear by the fourth decade of the last century that post-independent India would be a democratic, multi-cultural, and secular-modern state. Along with the political contours, what was also apparent was that the emerging India would invest a crucial part of its collective dream to developing a robust economy and advanced technologies. Be it the shadow-governments in various provinces before independence, or the structure of governance in the immediate post-independent years, pursuit of economic self-reliance, centralised planning and latest technological frontiers was almost a given.

It is not surprising then that India's Atomic Energy Agency came into existence in 1948, two years before the democratic Constitution of the country was adopted. The friendship between India's first Prime Minister Jawaharlal Nehru and nuclear scientist Dr. Homi Jahangir Bhabha acquired mythical shape during their lifetimes and represented the resilience and hope of a country that had just come out of centuries of colonial rule.

India's nuclear aspirations, both civilian and military, therefore, have been central to the evolution of the country as a post-colonial nation-state.

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<sup>15</sup> Deepak Kumar. 2006. *Science and the Raj: A Study of British India*. ISBN-13: 9780195687149



Since its inception, India's nuclear program has had a difficult relationship with India's democracy. The Department of Atomic Energy (DAE) functions directly under the Prime Minister, and there is very little public scrutiny or even parliamentary oversight over its decisions and resources. The Atomic Energy Act of 1962 allows DAE complete insulation and provides it a blanket cover from democratic accountability under the rubric of 'national security' which the DAE routinely invokes to silence any questioning by the media or common citizens. The DAE has repeatedly used this Act to intimidate voices questioning nuclear power.<sup>16</sup>

The landmark legislation to bring more transparency and accountability in governance – the Right to Information (RTI) Act 2005, has also been strongly resisted by the DAE which has sought to amend the RTI Act to disallow queries on all matters and concerns nuclear. An exemption from RTI for the DAE has been so contentious that the former Chief Information Commissioner himself wrote an open letter<sup>17</sup> to the Prime Minister urging against any such amendment.

It is ironic that the shroud of 'national security' was invoked by the DAE even after complete separation of civil and military nuclear facilities of the country in 2007 as per the provisions of the Indo-US nuclear cooperation agreement. All nuclear facilities deemed civilian are now subject to inspection by the International Atomic Energy Agency (IAEA). The Indian government agreed to adopt IAEA

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16 S P Udayakumar. 03 December 2004. "India: The Hazardous Mix of a Peculiar Act and Perilous Energy", Nuclear Monitor, Issue 619, WISE International. Available at <https://www.wiseinternational.org/nuclear-monitor/619/india-hazardous-mix-peculiar-act-and-perilous-energy>

17 "Do Do not dilute the Right To Information on nuclear safety issues: Chief Information Commissioner's letter to PM," Letter written by Sailesh Gandhi, Chief Information Commissioner, Gol to Prime Minister Manmohan Singh against diluting the Right to Information (RTI) Act to shield nuclear safety regulators. DiaNuke.org. Available at <http://www.dianuke.org/right-to-information-on-nuclear-safety-issues-chief-information-commissioners-letter-to-pm/>



safeguards and even signed its more intrusive Additional Protocol in 2014, but to its own citizens it continues to disallow queries pertaining to nuclear safety, performance of operating reactors and the attendant issues of health and environmental impacts.

The perils of such disproportionate political patronage and unaccountability were highlighted way back in 1985 by Prof Dhirendra Sharma in his book 'India's Nuclear Estate'<sup>18</sup>, but what followed is a sorry tale of vindictive witch-hunt against him. Prof. Sharma lost his job and the Centre for Interaction of Science and Society which he headed in New Delhi's Jawaharlal Nehru University was subsequently closed down.

After Fukushima, while most countries made their nuclear safety norms more stringent and introduced wider public oversight on the nuclear industry<sup>19</sup> as one of the key means to enhance safety, the Indian government has sought to make its nuclear establishment more secretive and undemocratic. The newly proposed Nuclear Safety Regulatory Authority (NSRA), which will replace the existing Atomic Energy Regulatory Board (AERB), seeks to amend the RTI Act<sup>20</sup>.

Dr. A Gopalakrishnan, the former head of the AERB, has himself questioned the efficacy of NSRA and its proposed provisions which would undermine democratic oversight of the nuclear industry. Dr. Gopalakrishnan is known for his

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18 Dhirendra Sharma (1985), *India's Nuclear Estate*, Lancer India Publication

19 T N Srinivasan and T S Gopi Rethinaraj. "Fukushima and thereafter: Reassessment of risks of nuclear power". *Energy Policy* 52(2013). pp.726–736.

20 Venkateshnayak, "Exempting Nuclear Safety from the Right to Information: Let's say NO!" February 8, 2012, DiaNuke.org. Available at <http://www.dianuke.org/exempting-nuclear-safety-from-the-right-to-information-lets-say-no/>



efforts in early 1990s for making AERB more transparent and ordering first-ever thorough safety review of all Indian nuclear facilities. Unfortunately, the two reports that the safety audit initiated by him produced were shelved by the government after being marked 'top secret'<sup>21</sup>.

More recently, in its 2012 report<sup>22</sup> on nuclear safety regulation in India under the AERB, the Comptroller and Auditor General (CAG) raised serious questions on the lack of democratic oversight and transparency in India's nuclear sector and underlined the safety implications of such secretive safety culture.

Brazen cover-ups of serious nuclear accidents have also been common in India, the most recent cases being the leak in Kakrapar<sup>23</sup> nuclear power plant in Gujarat in March 2016 and contractual workers being exposed to radiation in Rajasthan's Rawatbhata Atomic Power Station in 2012<sup>24</sup>.

That India's nuclear establishment has been able to avoid most basic democratic oversight and accountability despite such glaring discrepancies is astounding. M V Ramana in his book 'The Power of Promise' attributes this influence of the nuclear establishment to its capability to deliver the nuclear weapons to the country and also its promise of producing affordable electricity in

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<sup>21</sup> Interview with Kumar Sundaram Pathak, Editor, DiaNuke.org, on 21 March 2017.

<sup>22</sup> CAG Report on Atomic Energy Regulatory Board (AERB), available at <http://www.dianuke.org/dianuke-documents-cag-report-on-atomic-energy-regulatory-board-aerb/>

<sup>23</sup> Kumar Sundaram "Nuclear leak in Kakrapar may be more serious than the government is telling us", 15 March 2016, <https://scroll.in/article/805119/nuclear-leak-in-kakrapar-may-be-more-serious-than-the-government-is-telling-us>

<sup>24</sup> "Radiation Leak in Rawatbhata: The Nuclear Cover-Up Begins" available at <http://www.dianuke.org/radiation-leak-rawatbhata-nuclear-cover/>



abundance.<sup>25</sup> According to Ramana, the DAE has used these twin promises alternatively to keep itself relevant and above questioning.

### 3. Anti-nuclear Movements in India: Testing the Limits of Democracy

The power, legitimacy and claims of nuclear establishment described in the previous sections have been challenged by those opposed to nuclear weapons and energy within India – both independent experts and grassroots mobilisation. And it is this anti-nuclear movement that has and continues to expose one of the real and violent fault lines of Indian democracy – any questioning of the desirability, safety, health and environmental impacts and even economic viability of nuclear power without heavy subsidies even in advanced economies<sup>26</sup> is often responded to with blatant repression by the Indian state which otherwise makes high claims of being democratic and inclusive.

As scholars like Robert Jungk have demonstrated through their rigorous empirical research, nuclear enclaves – set of highly specialised scientific bureaucracies and decision-making institutions – acquire political centrality even in democratic countries and often without even military dimension to the country's nuclear program. World over, the nuclear age has been co-terminus with a political and epistemological hierarchy between laypersons and domain experts.<sup>27</sup>

Anti-nuclear voices are seen as decisive deviations from the consensus around the Indian nuclear dream and are hence, swiftly deemed 'anti-national' and

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25 M V Ramana. 2013. *The Power of Promise: Examining Nuclear Energy in India*. Penguin Global

26 "The Dream that Failed", *The Economist*. 10 May 2012. Available at <http://www.economist.com/node/21549936>

27 Robert Jungk. 1979. *The Nuclear State*. London: John Calder (Publishers) Ltd.



'anti-development'. When the local communities in Koodankulam on the southern-most tip of India rose in mid-2011 to oppose the scheduled commissioning of a nuclear plant in their vicinity, the State resorted to unprecedented violence and repression. At least 4 people lost their lives to police firing, stampede because of police intimidation, arrests, and brutal treatment in prison.<sup>28</sup>

The reactor they were opposing has been imported from Russia – Atomexportsroy's VVER-1000 design for which a commercial agreement happened in late 1980s between India and the erstwhile Soviet Russia. The first reactor in Koodankulam was ready for commissioning in September 2011 when the fisherfolk and farmers in the area started agitating in massive numbers. Having seen the Fukushima nuclear accident on television just months before, they raised crucial issues like the safety problems in the design, dense population around the plant site in violation of AERB norms, absence of credible evacuation plans, and denial of nuclear liability by the Russian company in case of an accident in the reactor.<sup>29</sup>

More than 8000 people in Koodankulam – farmers, fisherfolk, women and even adolescents – have been branded 'anti-national' in the course of protests and they continue to face charges of 'sedition' and 'war against the Indian state'<sup>30</sup>. People in such large numbers have not faced sedition charges even in Kashmir or

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28 NityanantJayaraman, "Police violence on peaceful protesters in Koodankulam – Detailed Updates (September 11, 2012)" <http://www.dianuke.org/police-violence-on-peaceful-protesters-in-koodankulam-detailed-updates-september-11-2012/>

29 S P Udayakumar. 25 August 2011. "Thirteen Reasons Why We Do Not Want the Koodankulam Nuclear Power Project." DiaNuke.org. Available at [www.dianuke.org/thirteen-reasons-against-the-koodankulam-nuclear-power-project/](http://www.dianuke.org/thirteen-reasons-against-the-koodankulam-nuclear-power-project/)

<sup>30</sup> <http://indianexpress.com/article/india/india-news-india/kudankulam-nuclear-plant-protest-sedition-supreme-court-of-india-section-124a-3024655/>



North-East where the Indian state is engaged in declared anti-insurgency operations. The horrific details of police atrocities in Idinthakarai and other nearby villages in Koodankulam were brought to light in a fact-finding report by eminent journalist Sam Rajappa.<sup>31</sup>

“The protest site, which was encircled by more than 7000 armed men, including those from Central forces and the Coast Guard, until March 23, was occupied (at the time of writing) by more than 10,000 people of whom 946 were elderly people, and 1500 children, including 715 below the age of five. Kuthenkuly is another village neighbouring Idinthakarai, which was also under a state of siege by the forces. This village has 553 primary school children, 198 children below age 5, and 462 elderly people.

Idinthakarai is totally dependent on outside sources for drinking water, medical facilities and fuel. Each day, nearly 50 tanker lorry loads of water are purchased at the rate of Rs. 2.50 per pot. Since the time of the announcement by the Chief Minister, no tanker lorries were permitted to enter Idinthakarai. Since all main roads have been blocked, food supplies, milk and water had dwindled as has the reserve of fuel, oil and diesel. On 20th and 21st March, even the media (NDTV, Headlines Today and PuthiyaThalaimurai) was prevented access to the site, and this access was restored only after concerted public pressure was mounted.”

This fact-finding report also highlights the desperate attempts by the state government to isolate key leaders and activists including Dr. S P Udayakumar:

“By hoisting false cases under all conceivable provisions of law, the government is under the mistaken belief that once he is arrested the protest will die down. Should the police lay its hands on Mr. Udhayakumar, there is every possibility of the hitherto peaceful agitation getting out of hands and turning violence. Just between 10.9.2011 and 23.12.2011, the Police had filed 107 FIRs against 55795 people and “others”. Of this, 6800 people have been charged with “sedition” and/or “waging war against the State,” perhaps the largest ever number in British or independent India for one police station. This is a parody of law. The frequency and manner in which the Police have filed cases against peaceful protestors clearly exposes that the police’s intent never was to uphold the rule of law, but to crush any dissenting voices.”

The report of the public hearing, headed by Justice A P Shah, on the state repression of democratic rights in Koodankulam provides disturbing details: police

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31 “Cases against Koodankulam protestors a parody of law: Fact Finding Team” available at <http://www.dianuke.org/cases-against-koodankulam-protestors-a-parody-of-law-fact-finding-team/>



mercilessly beat up villagers, ransacked their houses and destroyed their boats which are their only means of livelihood, surrounded the villages for more than a week and denied crucial supplies of medicines, food and milk. The report also highlights the curbs on freedom of expression and assembly and denial of information<sup>32</sup>. It states for instance, the following:

“The systematic registration of various cases against the protestors charging them with sedition, waging war against the Government of India, promoting enmity between different groups, and other provisions of the Indian Penal Code, seems to support the allegation of the persons who appeared before the committee that cases have been foisted on them in view of their active participation against the nuclear plant. The jury found that many arrests were made very arbitrarily. The mechanical and arbitrary method of arrests indicate that the issue was not that the persons concerned had committed an offence but was more to prevent any kind of legitimate protest or difference of opinion against more to prevent any kind of legitimate protest or difference of opinion against the nuclear power plant.....

....Plans by the police and revenue departments to impound passports and nullify ration cards of the protestors because they were wanting to return their voters ID as an act of protest was clearly illegal and in violation of the protestors' right to food. By preventing effective transport from reaching the villages and making children walk long distances, the children's right to education was deeply affected. The restriction on movement had an impact on the right to health of the residents in the surrounding villages as they could not get adequate and timely medical help. There was a severe impact on livelihood and the right to carry on trade and business as fishermen were unable to go the sea and small shopkeepers who depended on transport to get their goods from Tirunelveli were severely hit as they were unable to purchase goods and eke out their living.”

While releasing the said fact-finding report, Justice AP Shah voiced his concerns about the right to dissent in his eloquent and evocative address -

“In a democratic country, we have the right of a peaceful protest; right to assemble is a fundamental right; right to gather in a public place and protest is a fundamental right if it is not disturbing the public tranquility. The right to free speech and expression is the most fundamental right of all. Supreme Court says that – there is no hierarchy of rights but it is

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32 “Koodankulam Documents: Justice A P Shah Committee's Report” available at <http://www.dianuke.org/koodankulam-documents-justice-a-p-shah-commtees-report/>



the arc of all fundamental rights. It is definitely the most fundamental of rights. I have certain views. People may say that nuclear energy is good for the country, and some people may say that it is bad for the country. When I say that I have serious doubts about nuclear energy, will you brand me as anti-patriotic, as anti-national, as a person who should be charged with sedition or waging war against the state? What have these people done? They have protested against this particular plant. And there is not a single incident of violence. And what have the state authorities done? There are analyses produced before us of the cases instituted against them. Can any one of you explain to me how a peaceful protest against a nuclear plant, where people say that “we do not want a nuclear plant in our place,” amounts to sedition? Which ingredient of sedition is established here? Then you also invoke the provision related to waging war against the country. Where is the question of waging war against the country?”

Similarly, in Maharashtra’s Jaitapur where the government is setting up world’s largest nuclear plant, imported from France, local farmers and fisherfolk have faced brutal repression in response to their thoroughly peaceful mobilisation against the planned nuclear project. Besides highlighting the threats to their livelihoods that this plant will unleash, the villagers have also raised legitimate concerns about its safety. Their concerns have been bolstered by reports of independent experts as well as those of government institutions, regarding the active seismic faultlines precisely beneath the proposed reactor site.<sup>33</sup> What has been of even greater concern to those opposing the proposed plant is the fact that while nearly 92 earthquakes have occurred in Jaitapur in the span of the last two decades, the DAE remains in denial.<sup>34</sup>

In a bid to appease international vendors, the Government of India has brazenly diluted environmental norms and clearance procedures, as well as land

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33 V T Padmanabhan et al, 26 September 2015, “Reactors at earthquake faultline? It would be insane to go ahead with Jaitapur” available at <http://www.dianuke.org/reactors-at-earthquake-faultline-it-would-be-insane-to-go-ahead-with-jaitapur/>

34 “20 years, 92 quakes: Ground trembles beneath Jaitapur's feet” Times of India, 16 march 2011, <http://timesofindia.indiatimes.com/india/20-years-92-quakes-Ground-trembles-beneath-Jaitapurs-feet/articleshow/7714776.cms>



acquisition and liability laws, overlooked safety concerns, and violently clamped down on local protests. In Jaitapur, a violent crackdown by the police on a peaceful protest organized against the nuclear power plant, led to the tragic death of a local youth from the predominantly fishing community of Sakhri Nate village – a young man named Tabrez Soyekar, in indiscriminate police firing in April 2011.<sup>35</sup>

Hundreds of activists were detained and the peoples' march that they had started from Tarapur (where India's oldest and first nuclear plant is located) to Jaitapur, was immediately stopped by the Maharashtra Police. Nearly 135 protestors along with eminent citizens, including the former navy chief of India and retired Justice of the Supreme Court of India, were taken to Boisar Police Station and detained under Section 68 of the Bombay Police Act.<sup>36</sup>

As has been the case across most sites for proposed nuclear power plants, the Indian government has acquired land for these projects, through a mix of coercion and incentives, for instance, 'by raising compensation allotments and pressuring the farmers into submission'.<sup>37</sup> However, despite this, farmers in the region continue to agitate<sup>38</sup>. Though, it is important to note that farmers who own

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<sup>35</sup> "One killed as Jaitapur protest turns violent" The Hindu, April 18, 2011, available at <http://www.thehindu.com/news/national/other-states/One-killed-as-Jaitapur-protest-turns-violent/article14688174.ece>

<sup>36</sup> "Activists of anti-nuclear plant yatra detained" The Hindi, April 24, 2011, <http://www.thehindu.com/todays-paper/tp-national/Activists-of-anti-nuclear-plant-yatra-detained/article14695482.ece>

<sup>37</sup> "Jaitapur Nuclear Plant: Villagers reject revised compensation package offered by govt", Hindustan Times, February 12, 2013, <http://timesofindia.indiatimes.com/city/mumbai/Jaitapur-nuclear-plant-Villagers-reject-revised-compensation-package-offered-by-govt/articleshow/18468487.cms>

<sup>38</sup> Namita Kohli. 03 May 2015. "Ratnagiri villagers fight on against Jaitapur nuclear power project." Available at <http://www.hindustantimes.com/india/ratnagiri-villagers-fight-on-against-jaitapur-nuclear-power-project/story-GQCXJgpYKbOkaZnvbYyJVL.html>



agricultural land form only a small portion of those who suffer on account of land acquisition for these projects. A majority of those affected by land acquisition include those who do not own land, but either work on another's land or provide other forms of services to the farming community. Yet, they remain outside the ambit of any compensation offered by the government to those whose lands have been acquired for such 'development' projects<sup>39</sup>.

In continuation of earlier such resolutions, 13 village councils in the region passed unanimous resolutions in November 2015 opposing the proposed nuclear power park, proposed to be set up Madban region of Jaitapur<sup>40</sup>. Yet this has had no effect on the proposed nuclear power project. It is astounding that a Government which claims to be democratic nonetheless promotes a disabling environment of police repression and criminalization of dissent, and scuttles the voices of elected democratic bodies at the grassroots.

Adivasis (forest-dwelling tribal communities) in Chutka, in the State of Madhya Pradesh where another four nuclear plants have been planned, are also engaged in intense and massive resistance. These are the same tribal communities who were displaced in early 1980s for the Barghi dam in the region on Narmada river, with similar promises of compensation, jobs and land.<sup>41</sup> But they have seen the reality of such promises and what the neo-liberal 'development' means for

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<sup>39</sup> Performance Standard 5, Land Acquisition and Involuntary Resettlement  
[http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES)

<sup>40</sup> <http://www.thehindu.com/news/national/Villages-pass-resolution-against-Jaitapur-project/article10233938.ece>

<sup>41</sup> "Chutka: Tribals and Villagers Rise in protest against Nuclear Project" available at <http://www.dianuke.org/chutka-tribals-villagers-rise-in-protest-against-nuclear-project/>



people in rural areas. In 2015, when they assembled to oppose the public hearing conducted by the government to gain consent of the local residents for the project, they had to face brutal police violence and intimidation.<sup>42</sup>

Farmers in Mithivirdi, on the coast of Gujarat in Bhavnagar district, also faced police threat and repression when they opposed the public hearing which was being conducted in violation of due procedures and norms.<sup>43</sup>

One of the first steps that the Modi government took in 2014 after assuming power was to come up with a 'confidential' report by the Intelligence Bureau<sup>44</sup>, Government of India, calling Greenpeace, India, the Coalition for Nuclear Disarmament and Peace (CNDP), and other anti-nuclear and environmentalist organisations as well as individual activists, "anti-national". In a clear case of criminalising peaceful dissent, the IB report claimed that these anti-nuclear and environmental activists had brought down India's economic growth by 2 to 3%.

In an unprecedented expression of deep contempt and hostility, the former Indian Prime Minister, Manmohan Singh alleged that the anti-nuclear movement was being propelled by 'foreign money',<sup>45</sup> thus, casting aspersions on the affected

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42 "Chutka n-plant: local protest meeting demonstrates people's resolve to fight" report available at <http://www.dianuke.org/chutka-n-plant-local-protest-meeting-demonstrates-peoples-resolve-to-fight/>

43 "Mithivirdi Nuclear Project: 4,500 people of 28 villages Walk Out from Farcical Environmental Hearing" <http://www.dianuke.org/mithivirdi-nuclear-project-4500-people-of-28-villages-walk-out-from-farcical-environmental-hearing/>

44 "Concerted efforts by select foreign funded NGOs to 'take down' Indian Development Projects." 03 June 2014. Intelligence Bureau, Ministry of Home Affairs, Government of India. Secret IR/IS No.002. Downloaded from <http://www.insafindia.com/2014/06/foreign-hands-insaf-indicted-by-so.html>

45 Dinesh C Sharma. 24 February 2012. "Foreign hand nuking Tamil Nadu nuclear power project, says Prime Minister Manmohan Singh". India Today News Magazine. Available at <http://indiatoday.intoday.in/story/kudankulam-row-prime-minister-blames-foreign-countries/1/175007.html>



population and other civil society groups opposed to nuclear energy. The effect that this "foreign hand" bogey, employed at the highest level of government, had on ground, was the brutal repression of a peaceful and home-grown anti-nuclear grassroots movement, including leveling of charges of 'sedition' and 'war against the State' against thousands of ordinary men, women and even children in Koodankulam, the site of the anti-nuclear protests in the Indian State of Tamil Nadu.

This criminalization of dissent is summed up most succinctly by Pratap Bhanu Mehta who says, "anyone who disagrees with my views must be the carrier of someone else's subversive agenda."<sup>46</sup>

Following the Fukushima Daiichi nuclear disaster and a surge in popular opposition to this energy source<sup>47</sup>, there has been shift away from nuclear power, towards renewable energy sources. France, among the most invested in nuclear energy has decided to move towards a gradual reduction in the ratio of nuclear power from 75% of its total energy sources to 50%; it is also planning to close down nearly 17 nuclear reactors<sup>48</sup>.

Despite incontrovertible evidence which testifies to the inherently catastrophic nature of nuclear power – due to the insurmountable risks in case of potential accidents as well as unmanageable radiation effects along the entire

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<sup>46</sup> Mehta, PratapBhanu. "Do Not Disagree." The Indian Express. 29 February 2012. Available at <http://archive.indianexpress.com/news/do-not-disagree/917869/>

<sup>47</sup> T N Srinivasan and T S Gopi Rethinaraj. Op.cit.

<sup>48</sup> "France could close 'up to 17' nuclear reactors by 2025" France 24, 10 July 2017, <http://www.france24.com/en/20170710-france-hulot-could-close-nuclear-plants>



nuclear fuel cycle even under normal operation - the Indian Government, continues to insist on a massive expansion of its nuclear power generation capacity<sup>49</sup>.

#### 4. Why the Indian State Fails to Address Anti-nuclear Dissent Peacefully

The brutal repression of communities on the ground and brazen undermining of democratic procedures and norms that the government resorts to in order to push nuclear projects does not only reflect the democratic deficit in the country when it comes to protecting the interests of the industrial lobbies and middle classes, but it also pertains to some fundamental questions of sustainability and the problems inherent in nuclear technology.

Nuclear is an unforgiving technology. Major accidents in reactors might not be a frequent occurrence, but when such accidents happen, even countries with the best technical prowess and administrative abilities have found themselves helpless and crippled<sup>50</sup>. Nuclear enthusiasts like to compare accident scenarios to car accidents or industrial accidents. But they forget that even though the immediate physical damage and number of casualties might be greater, reconstruction and relief can start immediately.

However, that is not true of a nuclear accident. Even after three decades, the 30-kilometre zone around Chernobyl hosts ghost cities like Pripyat, which will remain uninhabitable for the coming centuries. Similarly, in the Fukushima zone, once-bustling cities like Namie and Futaba are now frozen in time. Radiation levels

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<sup>49</sup> <http://indianexpress.com/article/india/govt-clears-10-new-nuclear-reactors-in-big-power-push-4660869/>

<sup>50</sup> <https://www.theguardian.com/environment/2016/mar/11/fukushima-daiichi-nuclear-reactors-decommission-cleanup-japan-tsunami-meltdown>



remain dangerously high. Even in a technologically-advanced country like Japan, the accident has remained insurmountable.

A number of civil society organisations and grassroots anti-nuclear groups released a citizens' charter, titled "Indian People's Charter on Nuclear Energy" in July 2013 in Ahmedabad, which underlines the undemocratic nature in which the Indian state has been pursuing nuclear power projects and appeals for a wide public consultation on India's nuclear policy. It emphatically expresses the collective demand to withdraw draconian charges against people involved in the movement:<sup>51</sup>

"The government must immediately and unconditionally withdraw all charges of sedition and other false allegations against people protesting against nuclear projects. In the specific case of Koodankulam, the Supreme Court has directed the withdrawal of all charges against protesters which the Tamil Nadu government has refused to do."

In the post-Fukushima world, while countries that have hitherto been heavily invested in nuclear power, are rapidly abandoning this energy source, international nuclear lobbies have found in India, attractive markets and the hope of a nuclear renaissance. That is primarily because their governments can impose the nuclear plants on their populations by overlooking democratic questions pertaining to safety, costs, sustainability and desirability of this disastrous technology. In fact, in the more mature democracies of the West, strong public criticism has played a big role in the decline of nuclear industry even before the Fukushima accident<sup>52</sup>.

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51 Indian People's Charter on Nuclear Energy, 29 July 2013, Coalition for Nuclear Disarmament and Peace(CNDP), available at <http://www.cndpindia.org/indian-peoples-charter-on-nuclear-energy/>

52 World Watch Institute, "The End of Nuclear", April 2011. Available at <http://www.worldwatch.org/end-nuclear>



It is important to remember that movements of different countries have different characters. In Germany for instance, the anti-nuclear movement there has been based on decades of citizens' informed intervention about risks of radiation. It includes workers unions, professional groups such as medical associations and the larger sections of German middle classes.<sup>53</sup>

In Japan, the anti-nuclear people's movement developed against the backdrop of the Fukushima accident. Prior to that, the anti-nuclear sentiment was restricted to opposition to the nuclear bomb, particularly by the Hibakusha. Thus, even in Japan the primary concern with nuclear power stems from the seismic vulnerability of the country.<sup>54</sup>

In India, it is the villagers, fisher folk, farmers, women, worried about their land, livelihoods, water sources etc, (and not necessarily aware of the radiation risks), have come out to protest the Government's nuclear ambitions. Indian anti-nuclear movement is a movement pivoted around democratic rights, accountability and transparency. In Australia, there's a similar movement underway – a dissenting movement of aboriginals against the State and the usurpation of their rights.

India is among the earliest, and within the developing world, perhaps the first to embark on the path of nuclear development. Even before India had achieved independence, there was near total consensus on the need for new science/technology, including nuclear, to lead the country along the path of

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53 "40 years of German anti-nuclear action" Deutsche Welle, 30 June 2017, available at <http://www.dw.com/en/40-years-of-german-anti-nuclear-action/g-39477046>

54 Oguma Eiji, "A New Wave Against the Rock: New social movements in Japan since the Fukushima nuclear meltdown" Japan Focus: The Asia Pacific Journal, July 1, 2016 Volume 14 | Issue 13 | Number2 available at <http://apjif.org/2016/13/Oguma.html>



scientific progress and development. Thus, India's indigenous efforts in nuclear science and technology were established fairly early.

Given this near-total and unquestioned reverence for all things nuclear, there is little wonder that people's opposition to nuclear power plants in their vicinity, has been met with brutal suppression by the State – it is this elite nationalist consensus which has come down with a heavy hand on the ordinary people demanding basic dialogue, transparency and consent on a matter which will invariably affect their livelihood, health, environment etc.

### Conclusion

India's nuclear aspirations have been at the heart of post-independence nation building and have and continue to enjoy near-complete support across the political spectrum. It is against this backdrop, that India's anti-nuclear movement, its brutal repression by the Indian State and the shrinking space for democratic dissent must be understood.

When thousands of farmers, fisherfolk and common people dissented against the nuclear projects being set up in their vicinity, the government declared them 'anti-national' and 'anti-development', employing repressive legal and other measures to quell the protests, including demonising the movement.

This bulldozing of democratic rights to push for nuclear power has happened at all possible levels, which have laid bare the deliberate attempts of the State to quash dissent, resulting in an overall weakening of the people's right to disagree with the Indian State and to express such opposition publicly.

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